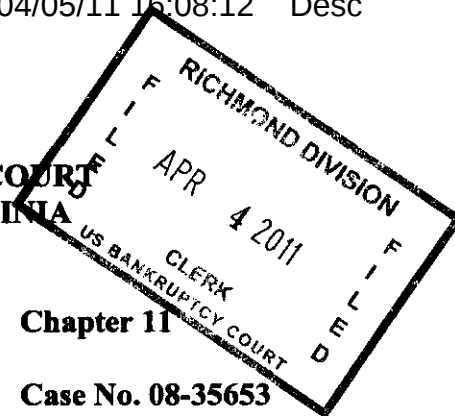


**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
RICHMOND DIVISION**

**Chapter 11**

**Case No. 08-35653**



**In re:**

**CIRCUIT CITY STORES, INC.,  
et al.,**

**Debtors.**

**RESPONSE OF 601 PLAZA TO LIQUIDATING  
TRUST'S FOURTEENTH OMNIBUS OBJECTION TO  
LANDLORD CLAIMS, CLAIM NO. 13697**

Comes now the claimant, 601 Plaza, LLC, by its counsel, Suzanne Jett Trowbridge and in response to the Liquidating Trust's objection to 601 Plaza's request for payment of an administration expense, claim no. 13697, states as follows:

1. On or about June 8, 1998, Circuit City Stores, Inc. entered into an agreement for the construction and lease of a Circuit City store in the shopping center located at Grand Central Avenue in Vienna, West Virginia (the "Lease").

2. Under the Lease, Circuit City was to pay monthly rent and a pro rata share of the common area maintenance and real property taxes.

3. Post-petition rent for the period from November 10 to November 30, 2008 was not paid. Per diem rent for those 20 days was \$1,145.22 for a total base rent of \$22,904.40, as shown on Exhibit 1 to the Response (Amended Summary of Post-petition claim).

4. Circuit City has failed to provide sufficient documentation supporting its objection and it has not met its burden of overcoming the presumption of the allowance

the claim. Pursuant to Section 9 of the Lease, the tenant is to pay its pro rata share of real estate taxes "at such intervals as Landlord is required to pay the "Real Estate Taxes".

5. Under West Virginia law, real property taxes are assessed on July 1<sup>st</sup> of each year and the tax year for purposes of real property taxes is July 1<sup>st</sup> to June 30<sup>th</sup> of the following year. Such taxes are payable on September 1 following the end of the tax year on June 30<sup>th</sup>.

6. Real property taxes were assessed by the Sheriff of Wood County, West Virginia on the property leased by Circuit City on July 1, 2008 in the total amount of \$56,746.07. Exhibit C to Application.

7. Circuit City's pro rata share of the taxes on its leased premises based on square footage for July 1, 2008 through June 30, 2009 was \$33,649.79, which taxes were not due and payable until September 1, 2009. Exhibit C to Application.

8. Circuit City's pro rata share of such taxes was \$23,416.56 based on 254 days of occupancy from July 1, 2008 to March 11, 2009. Since these taxes did not become due and payable until September 1, 2009, the debt is one which arose postpetition and the entire amount of Circuit City's pro rata share is a post petition claim. See Exhibit C to Application.

9. The Summary of Post Petition Claim (attached as Exhibit B to the Application) was erroneous in indicating that taxes and CAM were included in the per diem rent for November 10, 2008 through November 30, 2008. An Amended Summary is attached as Exhibit 1 hereto.

10. The lease provides that personalty remains the property of the tenant and shall be removable by the tenant at any time prior to, or within 30 days of the termination of the Lease. Lease at paragraph 23, Exhibit F to Application.

11. Trade fixtures are also removable under the lease. Exhibit F to Application.

12. Circuit City made alterations and modifications necessary and desirable to bring the premises into conformity with the prototype of Circuit City Stores.

13. Landlord incurred costs of \$48,500 in removing store personalty and trade fixtures belonging to Tenant and in repairing damage to the premises resulting from the tenant's use of the premises, including repairing and removing the alterations and modifications. Exhibit D to application.

14. Such costs are recoverable under Section 14(i) of the Lease whereby tenant agrees to indemnify and hold Landlord for damages occurring as the result of tenant's use of the property.

15. Except as provided herein, the Exhibits attached to 601 Plaza's Application are incorporated herein as if attached hereto. An Index of such Exhibits is attached as Exhibit 2 to this Response.

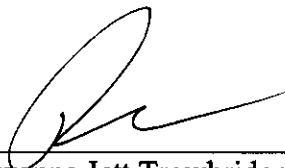
16. The person with personal knowledge of the facts alleged herein is

Pat Minnite, Jr., Manager  
601 Plaza LLC  
1000 Grand Central Mall  
Vienna, WV 26105

WHEREFORE, based on the foregoing, Circuit City has failed to provide sufficient documentation supporting its objection so as to rebut the presumption of the

validity and allowance of the claim. The claimant, 601 Plaza, LLC, requests that this Court overrule the objection of the Liquidating Trust to its request for payment of an administrative expense in the amount of \$95,709.76, claim number 13697, and that it grant 601 Plaza's request and allow it an administrative expense in the amount of \$95,709.76, and for such other relief as this Court determines is just.

601 Plaza L.L.C.,  
By counsel



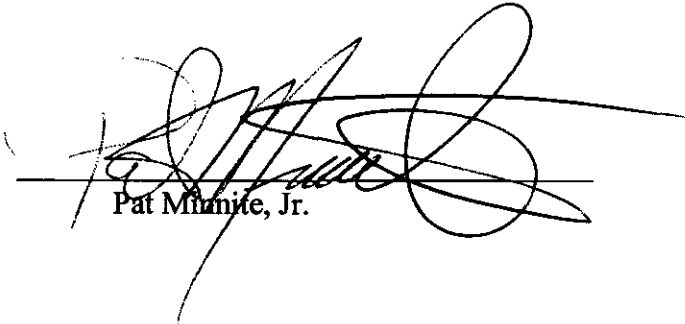
Suzanne Jett Trowbridge, Esq. (WV Bar #4261)  
Goodwin & Goodwin, LLP  
300 Summers Street, Suite 1500  
Charleston, WV 25301  
Telephone: 304-346-7000  
Telefax: (304) 344-0602  
Email: [sjt@goodwingoodwin.com](mailto:sjt@goodwingoodwin.com)

**VERIFICATION**

STATE OF WEST VIRGINIA,

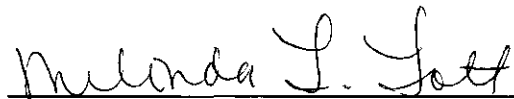
COUNTY OF Wood, TO-WIT:

I, Pat Minnite, Jr., being first duly sworn, state that I am the Manager of 601 Plaza, LLC, a West Virginia limited liability company and that I have read the foregoing Response of 601 Plaza to Liquidating Trust's Fourteenth Omnibus Objection to Landlord Claims, Claim No. 13697 and that I believe the information therein is true and correct.

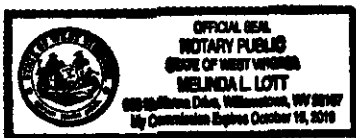
  
Pat Minnite, Jr.

The foregoing instrument was acknowledged before me this 30th day  
of March, 2011, by Pat Minnite, Jr.

My commission expires: 10-19-19

  
Notary Public

[NOTARIAL SEAL]



**Amended Summary of Post Petition and Administrative Rent**

Circuit City Stores, Inc., Case No. 08-35653 (KRH)  
601 Plaza: Landlord – Lease dated June 8, 1998  
RE: Circuit City Store #3666  
605 Grand Central Avenue, Vienna, WV 26105  
Summary of Post-petition Administrative Rent  
Amended

**Post-Petition Rent:**

- Rent: November 10-30, 2008 (20 days @ \$1,145.22) \$ 22,904.40
- CAM: Nov. 10 – 30, 2008 (20 days @44.44) \$ 888.80
- Pro rata share of real property taxes  
July 1, 2008 to March 11, 2009  
@ 92.19 x 254 days \$ 23,416.56

Subtotal Rent \$ 47,209.76

**Clean up and repair costs (landlord's estimate)**

- Exterior \$ 24,000.00
  - Remove sign on exterior facia of building and facia repair
- Interior \$ 24,500.00
  - Clean up and dumping
  - Wall patching and removing
  - Electric – cap off and rewire where required
  - Remove all electronic cabinetry and shelving

Subtotal cleanup repair \$ 48,500.00

Total Claim \$95,709.76

**Index of Exhibits  
601 Plaza Application**

- A. Memorandum of Lease dated June 22, 1998
- B. Summary of Post-petition Administrative Rent Obligations from November 10, 2008 to November 30, 2008
- C. Proration of real property taxes owed from July 1, 2008 to March 11, 2009 (rejection date) prepared by the office of the Wood County, West Virginia, Assessor.
- D. Affidavit of Pat Minnite, Jr. Manager of 601 Plaza L.L.C., as to cleanup and repair costs incurred by Circuit City upon vacation of the premises.
- E. Summary of Lease provisions giving rise to Debtor's post-petition obligation
- F. Copy of Lease dated June 22, 1998 without attachments.
- G. Deed dated November 18, 1998 by and between Pat Minnite, Jr. and Judith Rae Minnite, Grantors, to 601 Plaza L.L.C., Grantee for property subject to the lease and of record in Deed Boo 991, page 403 with the County Commission of Wood County.
- H. Photographs showing repairs and cleanup costs that are required as result of Circuit City's failure to perform its lease obligation upon vacation of the premises are available upon request.

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
RICHMOND DIVISION**

**In re:**

**Chapter 11**

**CIRCUIT CITY STORES, INC.,  
et al.,**

**Case No. 08-35653**

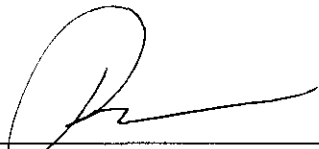
**Debtors.**

**CERTIFICATE OF SERVICE**

The undersigned counsel for 601 Plaza, LLC, hereby certifies that the **Response of 601 Plaza to Liquidating Trust's Fourteenth Omnibus Objection to Landlord Claims, Claim No. 13697** was served on the 1<sup>st</sup> day of April, 2011, by depositing a true and correct copy thereof in the United States Mail, postage prepaid, addressed as follows:

Jeffrey N. Pomerantz, Esq.  
Andrew N. Caine, Esq.  
(admitted pro hac vice)  
PACHULSKI STANG ZIEHL & JONES LLP  
10100 Santa Monica Boulevard  
Los Angeles, California 90067-4100  
Telephone: (310) 277-6910  
Telecopy: (310) 201-0760

Lynn L. Tavenner, Esq.  
Paula S. Beran, Esq.  
TAVENNER & BERAN, PLC  
20 North Eighth Street, 2<sup>nd</sup> Floor  
Richmond, VA 23219

  
\_\_\_\_\_  
Suzanne Jett Trowbridge (#4261)

LAW OFFICES

**GOODWIN & GOODWIN, LLP**

300 SUMMERS STREET, SUITE 1500  
CHARLESTON, WEST VIRGINIA 25301-1678

P. O. Box 2107  
CHARLESTON, WEST VIRGINIA 25328-2107

TELEPHONE (304) 346-7000  
TELECOPIER (304) 344-9692  
www.goodwingoodwin.com

201 THIRD STREET  
PARKERSBURG, WEST VIRGINIA 26101  
(304) 485-2345

P.O. Box 349  
500 CHURCH STREET  
RIPLEY, WEST VIRGINIA 25271  
(304) 372-2651

April 1, 2011

**Via Federal Express 8611 9096 5393**

Clerk of the Bankruptcy Court  
United States Bankruptcy Court  
701 East Broad Street – Room 4000  
Richmond, VA 23219

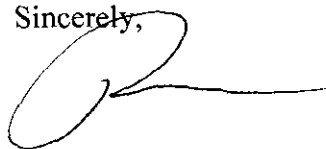
Re: *Circuit City Stores, Inc., et al.*  
Case No. 08-35653  
Request for Payment of Administrative Expense  
601 Plaza, L.L.C.  
Store #3666

Dear Clerk:

Enclosed for filing please find ***Response of 601 Plaza to Liquidating Trust's Fourteenth Omnibus Objection to Landlord Claims, Claim No. 13697*** in the above referenced matter.

I have also enclosed a copy to be date stamped and returned to me in the self addressed postage paid envelope that has been provided.

Sincerely,



Suzanne Jett Trowbridge

SJT/as

Enclosures

cc: Pat Minnite (w/enclosure)  
Jeffrey N. Pomerantz, Esq. (w/enclosure)  
Lynn L. Tavenner, Esq. (w/enclosure)